

Notices of Proposed Summary Rulemaking

NOTICES OF PROPOSED SUMMARY RULEMAKING

The Administrative Procedure Act allows an agency to use the summary rulemaking procedure instead of the regular rulemaking procedure for repeals of rules made obsolete by repeal or supersession of an agency's statutory authority or the adoption, amendment, or repeal of rules that repeat verbatim existing statutory authority granted to the agency. An agency initiating summary rulemaking shall file the proposed summary rulemaking with the Governor's Regulatory Review Council and the Secretary of State's Office for publication in the next available issue of the *Register*. The proposed summary rule takes interim effect on the date of publication in the *Register*.

NOTICE OF PROPOSED SUMMARY RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 5. LAND DEPARTMENT

PREAMBLE

1. Sections Affected

	<u>Rulemaking Action</u>
R12-5-901	Repeal
R12-5-902	Repeal
R12-5-903	Repeal
R12-5-904	Repeal
R12-5-905	Repeal
R12-5-906	Repeal
R12-5-907	Repeal
R12-5-908	Repeal
R12-5-909	Repeal
R12-5-910	Repeal
R12-5-911	Repeal
R12-5-912	Repeal
R12-5-913	Repeal
R12-5-914	Repeal
R12-5-915	Repeal
R12-5-916	Repeal
R12-5-917	Repeal
R12-5-918	Repeal
R12-5-919	Repeal
R12-5-920	Repeal
2. The specific authority for the rulemaking including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 37-132(A)(1)

Implementing statutes: A.R.S. §§ 37-604 through 37-607
3. The interim effective date of the proposed summary rules:

June 28, 1996
4. The name and address of agency personnel with whom persons may communicate regarding the rule:

Name:	Richard B. Oxford, Director Operations Division
	or
	Rebecca Matus, Administrative Secretary Operations Division
Address:	Land Department 1616 West Adams Phoenix, Arizona 85007
Telephone:	(602) 542-4602
Fax:	(602) 542-5223
5. An explanation of the rule, including the agency's reasons for initiating the rule:

A.R.S. § 41-1027(A)(1) authorizes use of summary rulemaking when an agency's rules become obsolete by repeal of the agency's

*Arizona Administrative Register*  
**Notices of Proposed Summary Rulemaking**

statutory authority.

The Arizona Enabling Act (June 20, 1910) established the framework by which Arizona could become a state. Section 28 of the Act granted trusteeship to the state of several millions of acres of land to be held in Trust to be leased or sold to earn revenues for 14 public beneficiaries of which the common schools receives the greatest benefit. In 1936, the Enabling Act was amended authorizing the state to exchange any lands owned by the state for other lands, public or private, under such regulations as the Arizona Legislature may prescribe (A.R.S. §§ 37-604 to 37-607). The amendment to the Enabling Act that allowed for exchanges of Trust land was never incorporated into the Arizona Constitution.

In 1990 the Arizona Supreme Court determined that the statutory framework, A.R.S. §§ 37-604 to 37-607, authorizing the state to exchange all state land, including State Trust land, for public or private land, violates the Arizona Constitution, Article 10, Section 3. [*Fain Land and Cattle Co. v. Hassell* (1990) 163 Ariz. 587, 790 P.2d 242].

With the determination that the statutory scheme regulating exchanges of state land found in A.R.S. §§ 37-104 through 37-607 is unconstitutional as applied to Trust land, the rules relating to the exchanges of Trust lands must also be considered invalid.

6. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.

7. **The preliminary summary of the economic, small business, and consumer impact:**

Not applicable pursuant to A.R.S. § 41-1055(D)(2).

8. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Not applicable.

9. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

No oral proceedings or hearings are scheduled. A person may submit written comments or request that an oral proceeding be held on the repeal of this rule by submitting comments or a written request for hearing no later than 5 p.m., August 19, 1996, to:

Name: Richard B. Oxford, Director  
Operations Division

or

Rebecca Matus, Administrative Secretary  
Operations Division

Address: Land Department  
1616 West Adams  
Phoenix, Arizona 85007

Telephone: (602) 542-4602

Fax: (602) 542-5223

10. **An explanation of why summary proceedings are justified.**

A.R.S. § 41 1027(A)(1) authorizes use of summary rule making when an agency's rules become obsolete by repeal of the agency's statutory authority.

The statutory framework, A.R.S. §§ 37-604 to 37-607, which authorized the subject rules, was determined to be unconstitutional. In 1990 the Arizona Supreme Court determined that the Arizona Legislature did not have constitutional authority to permit exchanges of State Trust land for public or private land [*Fain Land and Cattle Co v. Hassell* (1990) 163 v Ariz. 587, 790 P.2d 242]. In order for Arizona to legitimately permit exchanges of school trust land, it must amend the state constitution, as well as enact a statute setting forth the proper procedure.

11. **Any other matters prescribed by statute that are applicable to the specific agency or any specific rule or class of rules:**

None.

12. **Incorporations by reference and their location in the rules:**

None.

13. **The full text of the rules follows:**

*Arizona Administrative Register*  
Notices of Proposed Summary Rulemaking

TITLE 12. NATURAL RESOURCES

CHAPTER 5. LAND DEPARTMENT

ARTICLE 9. EXCHANGES

Section

- R12-5-901: Scope of Rules
- R12-5-902: Definitions
- R12-5-903: Informal Opinion
- R12-5-904: Application
- R12-5-905: Filing Fee
- R12-5-906: Appraisal Fee
- R12-5-907: Classification
- R12-5-908: State Lands Not to be Exchanged
- R12-5-909: Valuation of Land
- R12-5-910: Maps and Photographs
- R12-5-911: Exchange Without Public Hearing
- R12-5-912: Notices
- R12-5-913: Lands Conveyed to the State
- R12-5-914: Title, Reservations, Restrictions, and Easements
- R12-5-915: Exchange Requiring Public Hearing
- R12-5-916: Notice to Interested Parties
- R12-5-917: Evidence of Title
- R12-5-918: Controversy as to Title or Leasehold Rights
- R12-5-919: Judicial Notice
- R12-5-920: Compensation for Permanent Improvements

ARTICLE 9. EXCHANGES

**R12-5-901: Scope of Rules**

These rules apply only to exchange of state land under the provisions of A.R.S. §§ 37-604 to 37-608, inclusive, and shall prevail over and supersede any existing policy or procedure to the extent that they are in conflict therewith.

**R12-5-902: Definitions**

Unless the context otherwise requires:

1. "Commissioner" means the State Land Commissioner.
2. "Selection board" means that board composed of the Governor, the State Land Commissioner and the Attorney General, as authorized by A.R.S. § 37-202.
3. "Private owner" means any individual person, firm, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary representative, or any group acting as a unit, but does not include the government of the state, the government of the United States, and any subdivision, agency or instrumentality, corporate or otherwise, of either of them.
4. "Department" means the State Land Department.

**R12-5-903: Informal Opinion**

To minimize the expense involved to both parties in the formal processing of an application to exchange lands, a person may file a written request with the Department for an informal opinion of the Commissioner as to whether or not on the basis of the information submitted in such request there would be a benefit to the state of Arizona resulting from the proposed exchange. Any such informal opinion shall in no way prevent such person from later filing an application to exchange or the Department from accepting or rejecting the same.

**R12-5-904: Application**

The application shall be prepared and filed on such forms as the Department may from time to time prescribe. The application shall set forth such information as is required by law and these rules, including but not limited to the following: the name, age, and residence of the applicant; a description of all lands sought to be

exchanged, which description shall be technically competent, definite, susceptible of only one interpretation, and furnish sufficient information for the identification of the land on the ground; the number of acres contained in the lands of applicant offered in exchange, and applicant's estimated value thereof; the number of acres contained in the state lands applied for in exchange, and applicant's estimated value thereof; a list of permanent improvements on the lands to be exchanged, applicant's estimated value thereof and the description of the location thereof in such manner as to facilitate the location thereof on the ground; a description of any leasehold interest in the land to be exchanged or ownership of any improvements thereon, together with the name and address of any such claimant; accompanying agreements, if any, with the leaseholder or owner of improvements on the lands to be exchanged shall be attached to the application and filed therewith.

**R12-5-905: Filing Fee**

Each application filed with the Department shall be accompanied by a filing fee of \$10.00.

**R12-5-906: Appraisal Fee**

The cost of appraising the value of the privately owned property to be exchanged shall be paid solely by such applicant in such manner and at such time as the Department may direct. The applicant shall pay to the Department the sum of \$150.00 as an initial deposit toward such cost of appraisal; from time to time thereafter, upon the determination by the Department that such cost will exceed the amount of the initial deposit the Department will mail to applicant a written statement of the additional amount due and payment shall be made by applicant to the Department within 20 days from the date the notice is received.

**R12-5-907: Classification**

Before any state land may be considered for exchange under the provision of this Article, the land shall be classified as suitable for such purposes in accordance with the provisions of A.R.S. § 37-212. Any person adversely affected by such decision may appeal from the decision as provided in A.R.S. § 37-214.

**R12-5-908: State Lands Not to be Exchanged**

State lands known to contain oil, gases and other hydrocarbon substances, coal or stone, metals, minerals, fossils and fertilizer of every name and description, in paying quantities, or uranium, thorium, or any other material which is or may be determined by the laws of the state, the United States, or competent judicial decision of federal or Arizona state court to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, shall not be exchanged. The Department shall make such determination and its findings shall be conclusive. State lands adjoining upon which there are producing mines, oil or gas wells, or adjoining lands known to contain any of such substances, minerals or metals in paying quantities, or uranium, thorium, or any other material peculiarly essential to the production of fissionable materials, whether or not of commercial value, shall not be exchanged. The Department shall make such a determination and its findings shall be conclusive.

**R12-5-909: Valuation of Land**

All lands exchanged shall be of substantially equal value. The Department shall appraise the values of all lands described in the application to establish the full cash value thereof, giving due regard to the last established full cash value for state ad valorem tax purposes. The appraised value of state lands being exchanged shall, in the opinion of the Department, be substantially the same as the

*Arizona Administrative Register*  
**Notices of Proposed Summary Rulemaking**

appraised value of the lands sought by the application to be exchanged for lands managed by the Department, and such determination as to whether or not the lands to be exchanged are of substantially the same value shall be final.

**R12-5-910: Maps and Photographs**

The applicant shall furnish such map or maps of the lands to be exchanged, coded as to ownership in a suitable manner, as the Department may require and deem necessary to evaluate the application and assist in making an appraisal; and, in addition the Department may require an aerial photograph or photographs of such lands as it may specify in a request therefor.

**R12-5-911: Exchange Without Public Hearing**

If in a single transaction, the Department shall determine that the total area of state lands to be exchanged is less than five acres and its value, as computed pursuant to A.R.S. § 37-607, is less than \$20,000.00, the Department shall publish notice of said proposed exchange in the same manner and places as is required for the sale of state lands the name of the applicant, a description of the lands involved, and a statement that the application may be examined in the office of the Department. Interested parties entitled to receive such notices are the Arizona Department of Economic Planning and Development, the Board of Supervisors of the county in which the lands to be exchanged are located, the mayor of any municipality within whose jurisdictional limits any part of the lands to be exchanged are located, holders of leases or permits on the state lands to be exchanged, and holders of leases or permits on the privately owned lands to be exchanged whose interest is of record in the office of the county recorder of the county wherein such privately owned lands are located.

**R12-5-912: Notices**

All notices shall be by regular mail to the last known address of a party in the Department's records, and shall conclusively be deemed to have been received on the day following which such notice is deposited in the U.S. Mail by the Department.

**R12-5-913: Lands Conveyed to the State**

Lands conveyed to the state shall, upon acceptance of title and recording, be dedicated to the same purpose and administered under the same laws to which the lands conveyed were subject prior to such conveyance, but may be reclassified as provided in A.R.S. § 37-212.

**R12-5-914: Title, Reservations, Restrictions, and Easements**

An exchange for state lands shall not be authorized, approved or made unless the owner of the lands to be traded for state land agrees to grant to the state an absolute title in fee simple without reservation, restriction, or encumbrance, except such reservations of minerals, easements or rights of use consistent with such reservations as may be specifically set forth and described in the application and accepted and agreed to in writing by the Department prior to acceptance of title and recording. The applicant shall receive title in fee simple to the state lands being exchanged, except such reservations of minerals, easements pursuant to A.R.S. § 37-237, which notice shall contain descriptions of the properties involved, together with other terms and conditions of the exchange as the Department may deem pertinent. Any person residing in the county in which state owned land to be exchanged is located may, within ten days of the date of final publication of notice as provided herein, file a written protest of the exchange at the Department offices in Phoenix, Arizona, upon forms prescribed by the Department; any such protest shall contain a short and plain statement of the matters asserted and of the issues involved, the name, mailing address, and county of residence of the person filing such protest.

**R12-5-915: Exchange Requiring Public Hearing**

If, in any single transaction, the Department shall determine that the total area of state lands to be exchanged is equal to or greater than five acres or its value, as computed pursuant to A.R.S. § 37-607, is equal to \$20,000.00 or more, the Department shall publish notice of said proposed exchange in the same manner and places as is required for the sale of state lands pursuant to A.R.S. 37-237, which notice shall contain descriptions of the properties involved, together with other terms and conditions of the exchange as the Department may deem pertinent. The Department shall also schedule a public hearing on the exchange contemplated in the notice, which hearing shall be held at the county seat of the county in which the state lands to be exchanged are located. The hearing shall be held not less than 15 days prior to the date of the proposed exchange, at which time any person may appear and protest such proposed exchange.

**R12-5-916: Notice to Interested Parties**

Prior to any public notice of a proposed exchange of state lands for privately owned lands, the Department and Selection Board shall give 30 days' notice in writing to other interested state agencies; counties, municipalities, and leaseholders on such lands that are or may be affected by the trade. Such notice shall contain or rights of use consistent with such reservation as may be specifically set forth and described in the application or which the Department may require at any time prior to the acceptance of title and recording.

**R12-5-917: Evidence of Title**

An applicant may be required to furnish the Department with evidence satisfactory to it that applicant can convey to the state of Arizona absolute title in fee simple, subject only to such reservations of minerals, easements or rights of use consistent with such reservations as the Department may specify. The Department may in its absolute discretion accept a policy or contract of title insurance insuring the state of Arizona in an amount specified by the Department against such loss which the state of Arizona may sustain by reason of the unmarketability of the title agreed to be conveyed to it; however, the acceptance by the Department of any such policy or contract of title insurance shall not in any event be considered as a waiver of the obligation of the applicant to convey to the state of Arizona title in absolute fee simple except as may specifically be modified in writing by the Department.

**R12-5-918: Controversy as to Title or Leasehold Rights**

The Commissioner may in his discretion hold in suspension or jeet any application to exchange where it is found that title or leasehold rights in any of the land conveyed thereby are in controversy. The Department will not become a party to any controversy between different claimants to any of the land sought to be exchanged.

**R12-5-919: Judicial Notice**

The Department may take notice of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the Department's specialized knowledge, and the Department's experience, technical competence and specialized knowledge may be utilized in the evaluation of any information and evidence submitted to it.

**R12-5-920: Compensation for Permanent Improvements**

The Department shall appraise the permanent improvements on the state lands offered in exchange in accordance with A.R.S. § 37-322 and the applicant shall pay the value thereof to the Department upon demand, and the Department shall pay the same to the owner of said improvements on the effective date of the exchange or in lieu thereof the applicant shall submit an agreement between the owner of the improvements and the applicant relieving the state of Arizona and the Department and Commissioner of all duty to effect due compensation for such improvements to the owner thereof.